

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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| ULIOUS BROOKS, | : | |
| | : | NO. 1:09-CV-00922 |
| Plaintiff, | : | |
| | : | |
| | : | |
| v. | : | OPINION AND ORDER |
| | : | |
| | : | |
| HOMER YATES, et al., | : | |
| | : | |
| Defendants. | : | |

This matter is before the Court on the Magistrate Judge's Report and Recommendation, (doc. 69), to which no objections were filed. In her Report and Recommendation, the Magistrate Judge recommended that the Motion to Dismiss filed by Defendant Croft (doc. 57) be granted with prejudice, and that all claims against Defendant Schroeder be dismissed without prejudice. The Court agrees.

As to Defendant Croft, the Magistrate Judge found that the Plaintiff failed to state any constitutional claim under 42 U.S.C. §1983. Additionally, though there may be validity to Plaintiff's claims under state law, the Magistrate Judge determined that this Court lacks jurisdiction over such claims based on the assertion by Defendant Croft of state law immunity under Ohio R.C. §§9.86, 2743.02(F). Based on these findings, the Magistrate Judge recommended the claims against Defendant Croft be dismissed with prejudice. As to Defendant Schroeder, because Plaintiff failed to

perfect service on him, the Magistrate Judge found that all claims should be dismissed without prejudice absent a showing of good cause demonstrating why the claims should not be dismissed (see Fed. R. Civ. P. 4(m); doc. 66). Plaintiff filed a statement agreeing with the proposed dismissal (doc. 68).

Having reviewed this matter pursuant to 28 U.S.C. §636(b), the Court finds no clear error on the face of the record and agrees with the position taken by the Magistrate Judge. See Advisory Committee Notes to Fed. R. Civ. P. 72; Thomas v. Arn, 474 U.S. 140, 150(1985) ("It does not appear that Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation in its entirety (doc. 69. The Court therefore GRANTS Defendant Croft's Motion to Dismiss with prejudice (doc. 57) and dismisses all claims against Defendant Schroeder without prejudice.

SO ORDERED.

Dated: May 18, 2011

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge